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CUTIVE DIRECTOR
Christopher L. Manos

MEMO

FROM: Marie Connolly, State Bar
DATE: June 13, 2005
RE: Proxy Marriages in Montana

This is a memo with the intention of providing an overview of proxy marriages as the law exists in Montana at this time.

Montana Code Annotated: 40-1-301. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified. History: En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; R.C.M. 1947, 48-309(1), (2), (4); amd. Sec. 1, Ch. 247, L. 1979; amd. Sec. 3, Ch. 348, L. 1985.

The issue of double proxy marriages recently came up because of the LAMP Program (Legal Assistance to Military Personnel) and our soldiers in Iraq. A JAG magazine wrote the attached article listing Montana as the only State in the nation allowing double proxy marriages. It's interesting (and adds to the concern) that there's already a website out there who has this all organized: <http://www.marriagebyproxy.com/marriage.htm>.

See Research below for more information:

MARRIAGE LAWS

A proxy marriage is one where someone stands in for the other party. During the solemnization of the marriage, based upon a power of attorney, an agent acts on behalf of one of the parties. The marriage is presumed valid if it is valid in the country that performs the ceremony.

A proxy marriage is a marriage where the parties were not physically present in the presence of each other. A proxy marriage is generally not accepted under immigration laws unless it is subsequently

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consummated. However, a party of a unconsummated proxy marriage may enjoy immigration benefit as a fiancé if the opposite party is a U.S. citizen, such as applying for a K-1 visa.

Only a few states in the United States allow proxy marriages:

Texas has affidavits of absence forms if one of the parties is not able to come in the office. There is also a Prison Proxy form for those who are incarcerated and unable to be present for ceremony.

Montana 40-1-301. Solemnization and registration. A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

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Colorado also has an absentee application for its residents. If one party cannot appear due to illness, is out of state, or incarcerated, he or she must obtain an absentee application from the Clerk and Recorder's office. The party applying must bring the absentee application along with identification for the absent party. Applicants need not be residents of Colorado. Absentee application must be notarized.

24 N. Ill. U. L. Rev. 153

The ability of the non-citizen spouse to immigrate and become a legal resident is controlled by the citizen or resident spouse in most circumstances. The general process for becoming a spouse-based permanent resident requires that the citizen or resident spouse file a petition,¹² (unless the alien spouse fits into an exception that allows her to [*157] self-petition.)¹³ The petition is assessed to determine whether the requisite spousal relationship exists or existed.¹⁴ If the petition is approved, then the alien spouse must demonstrate that she is not excludable from the country on a variety of grounds such as health and income status, past criminal behavior, and violation of immigration law.¹⁵ She then becomes a legal resident either on a permanent or conditional basis.¹⁶

If the marriage is less than two years, the alien spouse becomes a resident on a conditional basis.¹⁷ If the condition is not removed after two years, then the resident status lapses and the alien spouse is an unauthorized alien.¹⁸ The removal of the condition generally requires a joint petition by both spouses, but there are some exceptions as explained below.¹⁹

This article addresses the notions of spouse-based immigration within the confines of the existing concept of spouse: a monogamous, not incestuous, male-female, legally sanctioned relationship. The immigration law as interpreted by the executive and judiciary has a particular view of who is a spouse. The marriage must be legally valid, and not against public [*158] policy, and not entered into for the sole purpose of obtaining immigration status.

Proxy Marriage-A good reason to Change the Law

From: Naed Strenner [mailto:under_achiever42@hotmail.com]

Sent: Thursday, February 02, 2006 8:44 AM

To: mailbox@montanabar.org

Cc: under_achiever42@hotmail.com

Subject: Proxy marriage

Dear Sirs,

I was wondering if you would be able to point me in the right direction regarding an attorney the does proxy marriages. My wife to be is Chinese and I'm an American living in China. We have no future plans of ever going to the U.S. to live.

Thank you.

Naed

RE Double Proxy Marriage - Enquiry From Israeli Family Law Firm
Dear Sir/Madam,

I found an article over the web published in Montana Lawyer Magazine in August 2004 in which Montana is referred to as the only US state where double proxy marriage is legal. This e-mail was given as a reference at the end of the article.

Our Tel-Aviv based firm specializes in family law. Civil marriage does not exist in Israel and we get regular enquiries about the possibility of legal proxy marriage, and are always looking for better options.

Would you kindly confirm that double proxy marriage is legal in Montana and state whether there are any citizenship as well as residency requirements. In particular, could an Israeli citizen and a non-US citizen living in Israel marry in a double proxy marriage in Montana? Could an American citizen who also has Israeli citizenship marry someone who is neither an Israeli or American citizen in Montana in a double proxy marriage?

If there are any contacts in Montana that you could recommend so that we can explore the possibility of working together on this, I would appreciate it. Our contact details are above.

Yours sincerely,

Louise Borochoy, adv.

Amihoud Borochoy - Law Office.
7, Dov Hoz St, Tel Aviv, 63416, Israel.
Tel: + 972-3- 5234133/5244317.
Fax: + 972-3-5232251/+972-9-8910507.
E-Mail: borochoy@family-laws.co.il
Websites : www.family-laws.co.il
www.inheritance-law.co.il

40-1-202. License issuance. Except as provided in 40-1-301, when ~~When~~ a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of \$53, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

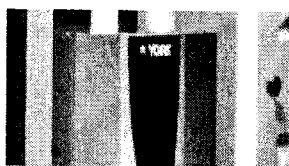
- (1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;
- (2) satisfactory proof that the marriage is not prohibited; and
- (3) a certificate of the results of any medical examination required by the laws of this state.

40-1-301. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

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(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

(4) Both parties to a proxy marriage must be authorized citizens of the United States of America and must submit such proof to the Clerk of Court upon submission of the application for marriage. One party or a legal representative of one party must appear before the clerk of the district court and pay the marriage license fee.



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Marine To Marry Fiancee in Videoconference Wedding

She's in Florida; He's in Africa



VIDEO ► CLICK TO WATCH

Francie Mercado, 25, will be at the University of Florida when she gets married via videoconference today. Her fiancé, Jason Druding, 26, is a Marine stationed in Djibouti, Africa. (ABC NEWS)

abc NEWS

Dec. 22, 2005 — A U.S. Marine stationed in Djibouti, Africa, will marry his betrothed in Florida today in a ceremony performed by a justice of the peace in Montana.

Cpl. Jason Druding met Francie Mercado, 25, on Yahoo! online personals in March. They met in person in May and got engaged in August — the same day Druding, 26, left for Camp Lejeune in North Carolina. They will be married by videoconference today in a first-of-its-kind wedding.

The event is being made possible by Freedom Calls, a nonprofit in New York that offers videoconferencing, telephone and Internet services to help U.S. troops overseas take part in important family events back home. The justice of the peace is from Montana because Montana is the only state that allows double-proxy wedding, which means neither the bride nor the groom are physically present.

Mercado's parents are in Puerto Rico. Her brother will be with her at the University of Florida to give her away, and her 3-year-old son will be the ring bearer.

The bride and groom are still trying to figure out what to do when the justice of the peace says, "You may kiss the bride."

"The joke around the company is I'm going to find a sensitive Marine," Druding said. "I'm probably going to be stuck with my pillow and that's about it."

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VIDEO ► Daughter Responds to Alleged Kidnapping

VIDEO ► Makeup Junkie Goes Cold Turkey

DISCUSSION

MESSAGE BOARD Join the Conversation at 'GMA'

While the ceremony, scheduled for 3:15 p.m. ET, will last 10 minutes, the videoconference will last about 90 minutes so they can have a "reception." The events will be broadcast on a 6-foot-tall screen.

Freedom Calls arranged for donations for her dress, veil, tiara, flowers, cake and champagne flutes. The nonprofit plans to do another videoconference for the couple when their son is born next year.

John Harlow, Freedom Calls' executive director, said that about 2,000 soldiers used the network each day to keep their commitment to both their families and the military. Freedom Calls has been used for events like parent-teacher conferences, adoption proceedings, first communions and bar mitzvahs, as well as, everyday events like sitting down to dinner with the family.

"Right now, it's economically and technologically feasible for a soldier to come back from a day of battle and then spend virtual time with their family and virtually tuck their kids into bed at night," Harlow said.

The Freedom Calls Foundation is based out of Brooklyn Heights, N.Y.

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Threaded (Message Subject, Indented)

Getting Married While Deployed

by Guest User on 05 May 2006

Message: Short notice deployments have become a common reality recently. It's tough enough to leave a spouse behind, but what if you're not married yet?

Many active duty people I have talked to are worried about how their fiancée will be taken care of while they are gone. Until you are a spouse, you don't get military benefits and the support from the command, while getting better, still isn't usually as good.

I had never heard of this before, but there is a type of ceremony called a "proxy wedding" which allows a stand-in for either the bride or groom. Unfortunately it is only performed in 4 states.

However, Montana allows a "double-proxy wedding" where stand-ins are used for BOTH bride and groom. The marriage is recognized as legal by all 50 states and all branches of the military.

www.marriagebyproxy.com (run by S&B, Inc) is dedicated to helping geographically separated couples get married using the double-proxy ceremony. They do all of the paperwork, know all the legalities and basically do all the work for you.

I have talked with the owners, Sam and Barbara Geller, and they are the most helpful people you could want to deal with. I've also talked with various couples (both enlisted and officers) who have used their service and all have been absolutely delighted.

It only takes 3 weeks from when you get the paperwork to them, and it is all reviewed by a Montana lawyer prior to the ceremony taking place.

The biggest benefit I have heard about this is that it gives the deployed person piece of mind that their loved one is taken care of, even if something happens to them. Each of the couples I talked to are having a "proper" wedding once the active duty person returns, so they are not losing out on that.

Marriage By Proxy is really geared towards military couples (90% of their clients) and they have helped over 150 couples tie the knot using a double-proxy marriage in the last 2 years.

As a military spouse myself, I really think services like this should be more widely publicized. The deployed person needs to have their head focused on the task at hand, not worrying about their fiancée back home.

Marriage By Proxy has made a real difference in a lot of people's lives over the last two years, and they donate a portion of their profits to Operation Uplink which provides phone cards for deployed personnel (which I think is very commendable).

For more information, check out their website: www.marriagebyproxy.com.

Thread	Author	Date
◆ Supporting Moms of Soldiers	Guest User	12 February 2006
— RE: Supporting Moms of Soldiers	Guest User	20 February 2006
— RE: Supporting Moms of Soldiers	Guest User	16 April 2006

This is the html version of the file <http://www.freedomcalls.org/pdf/bozeman2.pdf>.

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To link to or bookmark this page, use the following url: <http://www.google.com/search?q=cache:zs8h0lH720gJ:www.freedomcalls.org/pdf/bozeman2.pdf+double+proxy+weddings&hl=en&gl=us&ct=clnk&cd=7>

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These search terms have been highlighted: **double proxy weddings**

E-wedding in Montana unites couple thousands of miles away

By GAIL SCHONTZLER, *Chronicle Staff Writer*

They met over the Internet and they married over the Internet.

Francie Mercado, 25, wearing a white lace wedding gown at the University of Florida, and Jason Druding, 26, wearing Marine desert camouflage fatigues at a base in Djibouti, Africa, got married Thursday in a ceremony held thousands of miles away at Montana State University.

Although they were eight times zones and two continents apart, the jovial groom and smiling, tearful bride were able to see and hear each other's vows, thanks to a video-conference signal carried over the Internet.

Montana Justice of the Peace, Gordon Smith, officiates over the wedding of the bride, Francie Mercado in Florida and the groom, Jason Druding in Djibouti, Africa.

"We decided to take the plunge, as it were. Get it done," Lance Cpl. Druding said from Djibouti, while waiting for the marriage license to show up in Bozeman. "We wanted

Ljiboun, while waiting for the marriage license to show up in Bozeman. I'm pretty nervous right now."

Some states allow **weddings** by **proxy**, in which one party isn't physically present, but is represented by someone who stands in their place.

Montana is the only state that allows a **double proxy** wedding, according to Marie Connolly, coordinator of the State Bar of Montana's Lawyer Referral Service.

Witnesses gathered at MSU's Burns Telecommunications Center, in a room usually used to hold classes or conferences via video.

"Francie, you look beautiful, baby," Jason said, his voice delayed a few seconds because of the distance.

"Do I look pregnant?" Francie asked him.

Page 2

"Stand sideways, baby," Jason teased her.

The bulge in the wedding dress left no doubt that the couple had been in the same neighborhood sometime in the past.

Gallatin County Justice of the Peace Gordon Smith conducted the ceremony, while Bozeman attorneys Buzz Tarlow and Kirsten Core acted as proxies for the couple.

After Jason and Francie vowed to love, honor and cherish, for better or worse, until death did them part, the judge asked the attorneys to exchange rings on behalf of the absent couple.

The attorneys hugged and laughed in lieu of a kiss.

"When my wife hears about this ..., " Tarlow joked. "Don't put our pictures on the wedding page, please."

On the split video screen in Bozeman, witnesses saw the Marines gathered with Jason

and the relatives gathered around Francie break into applause.

She wiped away a tear. Jason asked his chaplain for a prayer, and afterward broke out cigars and shook hands all around.

Double proxy marriages could be risky, if couples ended up with licenses questioned by other states or by immigration authorities who suspect fraud, the attorneys said.

But Smith said he has no concerns about the legality of this marriage. In fact, he said, a video wedding seems better than most single **proxy** ceremonies. Both bride and groom were present, even if at long distance, and spoke for themselves.

Jason said he and Francie met last spring after he posted a personal ad on the Internet, an idea he blamed on his brother.

They met and, he said, "We've been together ever since."

They tried to get married at Camp Lejeune, N.C., but it didn't work out, he said.

After he went overseas, Francie contacted Freedom Calls Foundation, a nonprofit group that helps U.S. troops in Iraq and Afghanistan keep in touch with their families by video for free.

Gail Schontzler is at gails@dailychronicle.com

Proxy marriage

From Wikipedia, the free encyclopedia

A **proxy marriage** is a marriage in which either the bride or the groom is not physically present for the wedding. During the solemnization of the marriage, based upon a power of attorney, a stand-in, or proxy, acts on behalf of one of the parties. If neither party is present, it is called a **Double-proxy Marriage**.

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- 4 Further reading

History

It was common for European monarchs and nobility to to be wed by proxy marriage. A famous example of this is the marriage of Napoleon I of France to Marie Louise, Duchess of Parma. Catherine of Aragon wed Prince Arthur by proxy. A famous 17th-century painting by Peter Paul Rubens depicts the proxy marriage of Marie de Medici.^[1]

During the early 1900s, proxy marriages increased significantly when many Japanese picture brides arrived at Angel Island, California. Since the early 20th century it has been most commonly used for marriages involving members of the military on active duty.^[1]

Various Internet sites offer to arrange proxy and double-proxy marriages for a fee.

Legality

United States

Proxy marriages are illegal in all US states except California, Colorado, Texas and Montana. In California, it was legalized in 2004 and is only available to members of Armed Forces currently deployed and unable to attend a service. Montana is the only state that allows double-proxy marriage.^[2] Not all states fully recognize proxy marriages, but legal precedent dictates that states recognize proxy marriage as at least a common law marriage.^[3]

Other countries

Mexico and Paraguay both offer proxy marriages for a fee. Proxy marriages through the consulate of Paraguay in Tel Aviv are recognized by Israeli law.

References

1. ^{a b} Cafazzo, Debbie. "Marriage by proxy used for ages", *Tacoma News Tribune*, 2006-06-01.

2. ^ Cafazzo, Debbie. "Proxy marriage allows war-torn couple to legally tie the knot", *Tacoma News Tribune*, 2006-06-01.
3. ^ (November 1924) "Aliens. Marriage by Proxy Held to Give Alien Woman Status of "Wife"". *Virginia Law Register*: 516-520.

Further reading

- Operation 'I Do': Moody AFB Attorneys Help Couple Tie Knot

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